

1
2
3
4
5
6
7
8 **UNITED STATES DISTRICT COURT**
9 **NORTHERN DISTRICT OF CALIFORNIA**
10 **OAKLAND DIVISION**

11 DENO MILANO,

12 Plaintiff,

13 vs.

14 INTERSTATE BATTERY SYSTEM OF
15 AMERICA, INC.; INTERSTATE BATTERY
16 SYSTEM INTERNATIONAL, INC.,

17 Defendants.

Case No. 10-CV-2125-CW

**~~PROPOSED~~ FINAL JUDGMENT AND
ORDER**

1 This case was filed in 2010 as a proposed class action and was resolved pursuant to the terms of
 2 the Amended Class Action Settlement Agreement dated February 16, 2012 (“Amended Settlement
 3 Agreement”). (Dkt. No. 77.) Where not otherwise defined, all capitalized terms in this Final Judgment
 4 and Order shall have the same meaning as set forth in the Amended Settlement Agreement. The
 5 proposed class action settlement has proceeded through the required process for Court approval and is
 6 now formally and finally approved by this Court.

7 Due and adequate notice having been given of the proposed amended settlement as required by
 8 the Preliminary Approval Order, (Dkt. No. 75), and the Court having considered all papers filed and
 9 proceedings had herein, the Court now enters this Final Judgment and Order stating the final
 10 disposition of the case and the terms of the relief to which the Parties are entitled.

11 IT IS HEREBY ORDERED, ADJUDGED AND DECREED AS FOLLOWS:

12 **THE PARTIES AND DEFINITIONS USED IN THIS FINAL JUDGMENT AND ORDER**

- 13 1. The Named Plaintiff is Deno Milano, who filed this Litigation in 2010.
- 14 2. Defendants are Interstate Battery System of America, Inc. (“Interstate Batteries”)
 15 and Interstate Battery System International, Inc.
- 16 3. The Released Parties are Interstate Battery System of America, Inc.; Interstate
 17 Battery System International, Inc.; their predecessors, successors, and assigns; the present and
 18 former, direct and indirect, parents, subsidiaries, sister corporations, divisions, corporate
 19 affiliates, or associates of any of the above; and the present and former employees, officers,
 20 directors, control persons, members, principals, partners, agents, attorneys, shareholders,
 21 advisors, assigns, and representatives of any of the above. “Released Parties” includes
 22 distributors and authorized dealers owned by any Settling Defendant, but “Released Parties”
 23 does not include distributors and authorized dealers not owned by a Settling Defendant.
- 24 4. The Effective Date is the date on which all appellate rights with respect to this
 25 Final Judgment and Order have expired or have been exhausted in such a manner as to affirm
 26 this Final Judgment and Order, and when no further appeals are permissible, including review by
 27 the United States Supreme Court.

CERTIFICATION OF SETTLEMENT CLASS

5. The Court has certified the following Settlement Class pursuant to Federal Rule of Civil Procedure 23(b)(2):

All original purchasers of an Interstate Batteries trademarked battery (meaning the Interstate Batteries, Nationwide, Power Volt, and Quickstart brands) that was covered by a Previous Interstate Batteries' Pro-Rata Warranty and that was purchased from an Interstate Batteries authorized dealer (but not from an All Battery Center Store), in the United States or the District of Columbia, at any time from April 19, 2000 through April 30, 2012, and who:

(i) later presented that original battery, during the applicable pro-rata-warranty-coverage period, to an Interstate Batteries authorized warranty dealer for a pro-rata-warranty adjustment on the price of a Replacement Battery, and who then purchased that Replacement Battery from that dealer at an adjusted price on a date from May 19, 2006, through April 30, 2012 ("Replacement-Battery-Purchaser Class Members"); or

(ii) still had, on or before April 30, 2012, an unexpired contractual right under a Previous Interstate Batteries' Pro-Rata Warranty to purchase a Replacement Battery in a pro-rata-warranty-adjustment transaction if their original battery fails under the terms of the Previous Interstate Batteries' Pro-Rata Warranty ("Unexpired-Warranty-Holder Class Members").

Excluded from the class definition are Interstate Battery System of America, Inc., and Interstate Battery System International, Inc.; affiliates, parents, or subsidiaries of Settling Defendants; entities in which Settling Defendants have a controlling interest; predecessors, successors, or assigns of Settling Defendants; any judges who preside over this Litigation before Final Judgment, their spouses, the members of their staffs, and anyone within the third degree of relationship from the judges or their spouses, as well as those persons' spouses; and persons employed by Class Counsel.

FINAL APPROVAL OF CLASS SETTLEMENT

6. The Court hereby reaffirms its finding that the Settlement Class defined above in paragraph 5 meets the requirements of Federal Rule of Civil Procedure 23(b)(2).

7. The Court finds that the notice given in this Rule 23(b)(2) class action settlement is both appropriate under Rule 23(c)(2)(A) and is reasonable under Rule 23(e)(1). The Court further finds that appropriate notice under the Class Action Fairness Act, 28 U.S.C. § 1715, has been given to the appropriate federal and state governmental officials. The Court has given the appropriate state and federal government officials the requisite ninety day time period (pursuant

1 to 28 U.S.C. § 1715) to comment or object to the proposed amended settlement before entering
2 this Final Judgment and Order, and no such objections or comments were received.

3 8. The Court has considered the two objections submitted regarding final approval
4 of the settlement.

5 a. The Court finds that Leonard A. Wood, Jr, a former Interstate Batteries
6 dealer, did not establish that he is a Settlement Class Member so he does not have standing to
7 object to the proposed settlement. The Court further finds that the matters contained in Mr.
8 Wood's objection relate to his situation as a former Interstate Batteries dealer, and thus do not
9 pertain to the claims in this Litigation. Accordingly, the Court overrules Mr. Wood's objections.

10 b. The Court finds that Wayne Barginear failed to respond to Plaintiff's
11 discovery requests for documents and tangible things and thus did not comply with the
12 preliminary approval order entered by the Court on March 8, 2012. (*See* Dkt. No. 72.) By
13 failing to respond to Plaintiff's discovery requests, Mr. Barginear is also in violation of the
14 stipulation and order entered by the Court on June 1, 2012. (*See* Dkt. Nos. 89 & 90.) Pursuant
15 to the March 8 Order, the Court hereby strikes Mr. Barginear's objection, which the Court notes
16 Mr. Barginear repudiated in his deposition testimony on June 25, 2012. (*See* Dkt. 97, Exhibit 1.)
17 The Court also overrules Mr. Barginear's objection on the merits. The Court finds that the
18 objection misstates Supreme Court precedent and repeatedly makes notice objections based on
19 the subpart of Federal Rule of Civil Procedure 23(c) that applies to Rule 23(b)(3) classes—not
20 this Rule 23(b)(2) class. The Court further finds that the Notice Plan is appropriate and
21 reasonable, the terms of the settlement are fair, reasonable, and adequate, and the Court's
22 deadlines and administrative requirements for objections were proper.

23 9. The Court has considered the following factors in determining whether the
24 settlement should be finally approved: (1) the strength of the plaintiff's case; (2) the risk,
25 expense, complexity, and likely duration of further litigation; (3) the risk of maintaining class
26 action status throughout the trial; (4) the amount offered in settlement; (5) the extent of discovery
27 completed and the stage of the proceedings; (6) the experience and views of counsel; (7) the
28 presence of a governmental participant; and (8) the reaction of the class members to the proposed

1 settlement. *Churchill Vill., LLC v. Gen. Elec.*, 361 F.3d 566, 575 (9th Cir. 2004). In addition,
 2 the Court has considered all of the requirements identified in *In re Bluetooth Headset Prods.*
 3 *Liab. Litig.*, 654 F.3d 935 (9th Cir. 2011), including the possibility of collusion among the
 4 negotiating parties. In this case, the negotiating parties conducted Court-ordered mediation
 5 before an experienced former California judge. This mediation occurred after the parties had
 6 conducted significant discovery and assessed the merits of the case. Moreover, the record
 7 demonstrates that, at the direction of this former California judge, the parties reached agreement
 8 on all substantive terms before discussing attorneys' fees or Named Plaintiff's incentive award.
 9 The Court finds that the settlement is a result of extensive, arm's-length negotiation. Finally, the
 10 conduct of counsel before this Court over the course of the Litigation demonstrates that counsel
 11 for both sides are experienced in class action litigation and zealously represented their respective
 12 clients. After considering all of those factors, the Court approves every term of the Amended
 13 Settlement Agreement, finding that it is fair, reasonable, and adequate. The Court directs the
 14 Parties to implement the Amended Settlement Agreement according to its terms.

15 **INJUNCTION AGAINST DEFENDANTS**

16 10. Pursuant to the terms of the Amended Settlement Agreement, Defendants are
 17 HEREBY ENJOINED as follows:

18 **Implementation of Improved Business Practices**

19 11. The Court enjoins Interstate Batteries to implement the improved business
 20 practices stated below (in paragraphs 11(a) to 11(g)) until December 31, 2014. The Court finds
 21 that Interstate Batteries began implementing the improved warranty practices in May 2012, with
 22 the specific approval of Class Counsel.

23 a. Interstate Batteries shall rewrite and begin using a new form of limited
 24 warranty for the Interstate Batteries brand of automotive batteries currently sold by Interstate
 25 Batteries authorized dealers in the United States and the District of Columbia.

26 b. Interstate Batteries shall make the terms, language, and format of this new
 27 limited warranty more easily understood by consumers.

1 c. If the new form of limited warranty for some automotive battery models
2 includes a pro-rata warranty, Interstate Batteries shall state clearly how any pro-rata-warranty-
3 adjustment price would be calculated. Moreover, that calculation shall be based on Interstate
4 Batteries' then-current "Suggested Retail Price" for the replacement battery, and not based on
5 Interstate Batteries' "List Price."

6 d. Interstate Batteries shall improve its method of delivering this new limited
7 warranty to consumers. Going forward, Interstate Batteries shall create a new program of
8 providing this new written limited warranty to its authorized dealers, through its distributors,
9 with instructions that dealers are to deliver the new written limited warranty to the purchaser at
10 the time of sale of any Interstate Batteries brand of automotive batteries sold by Interstate
11 Batteries authorized dealers in the United States and the District of Columbia. As the Warrantor,
12 Interstate Batteries is specifically permitted to provide the warranty to the "sellers" of the
13 batteries under the Magnuson-Moss Warranty Act.

14 e. When Interstate Batteries begins using the new form of limited warranty,
15 however, there will be batteries that Interstate Batteries has already sold (to its distributors or
16 otherwise) and that are already in the chain of distribution and labeled or packaged with the
17 Previous Interstate Batteries' Pro-Rata Warranty. Interstate Batteries is not required to recall or
18 repackaging any of those batteries.

19 f. The new limited warranty shall contain all statements and disclosures
20 required by the Magnuson-Moss Warranty Act.

21 g. Interstate Batteries shall take reasonable steps to ensure that any posting of
22 this new limited warranty is uniform with the language of the hard copies of that limited
23 warranty provided at the time of sale.

24 12. The injunctive obligations relating to the improved business practices described
25 above (in paragraphs 11(a) to 11(g)) shall apply only to the current models of Interstate Batteries
26 brand of automotive batteries currently sold by Interstate Batteries authorized dealers in the
27 United States and the District of Columbia as of the date of this Final Judgment and Order; those
28

obligations shall not apply to any new or different battery models or products that Interstate Batteries may develop, market, sell, or distribute after the date of this Final Judgment and Order.

Implementation of Interstate Batteries Settlement Program

13. The Court enjoins Interstate Batteries to implement the Interstate Batteries Settlement Program according to the specific terms contained in the Amended Settlement Agreement, (Dkt. No. 77 at 31-44), until March 15, 2021. The Court finds that Interstate Batteries formally commenced the Interstate Batteries Settlement Program on January 9, 2012.

a. Subject to the limitations described in the Amended Settlement Agreement, Interstate Batteries shall provide a product voucher for \$5 to any eligible Settlement Class Member who timely submits a valid tier-one claim.

b. Subject to the limitations described in the Amended Settlement Agreement, Interstate Batteries shall provide any eligible Settlement Class Member's choice of a check card in the amount of \$8.50 or a product voucher for \$12 to any eligible Settlement Class Member who timely submits a valid tier-two claim.

c. Interstate Batteries shall mail or email any product voucher or check card issued in connection with a valid tier-one or tier-two claim form to the claimant within 30 days of Interstate Batteries' receipt of the valid tier-one or tier-two claim.

d. Interstate Batteries shall continue to provide additional notice in the future regarding the Interstate Batteries Settlement Program, according to the specific terms contained in the Amended Settlement Agreement. (Dkt. No. 77 at 27-29.) That additional notice shall include the Class Settlement Website, online hyperlinks from keyword searches, and Interstate Batteries' Website, and will continue through 2020.

Limitations on Injunctive Relief

14. Any action by Defendants to comply with any federal, state or local law, enactment, regulation, or judicial ruling shall not constitute a violation of this injunction. In the event that any obligations under this injunction become unlawful under any future federal, state or local law, enactment, regulation, or judicial ruling, then Defendants shall be released from performing such obligation.

RELEASE, WAIVER, AND RESERVATION OF RIGHTS

15. The Court HEREBY fully, finally, and forever RELEASES AND DISCHARGES the Settlement Class Members' claims and rights as follows:

Release of Claims and Rights by Replacement-Battery-Purchaser Class Members

16. Release of Equitable Claims by Replacement-Battery-Purchaser Class Members:

Upon the Effective Date, the Released Parties shall be fully, finally, and forever released and discharged from any and all claims for injunctive relief, declaratory judgment relief, and any other non-monetary equitable relief, known or UNKNOWN, arising on or before the Effective Date that the Replacement-Battery-Purchaser Class Members either asserted or could have asserted in the Litigation, including but not limited to equitable claims based on: (1) Interstate Batteries' warranty; (2) the Magnuson-Moss Warranty Act; (3) breach of the implied covenant of good faith and fair dealing; (4) the California Song-Beverly Consumer Warranty Act; (5) the Consumers Legal Remedies Act; (6) unlawful, unfair, and fraudulent business practices; and/or (7) the consumer protection statutes of any State or the District of Columbia. Replacement-Battery-Purchaser Class Members do not release any claims they may have against the Released Parties for personal injury or property damage. Individual monetary claims asserted on behalf of individual Replacement-Battery-Purchaser Class Members are not released under this Final Judgment and Order. If a Replacement-Battery-Purchaser Class Member elects to participate in the Interstate Batteries Settlement Program, however, he or she will be required to agree to the release described below in paragraph 24 and in the Amended Settlement Agreement. (Dkt. No. 77 at 52, Exs. D-E.)

17. After entering into the Amended Settlement Agreement, Replacement-Battery-Purchaser Class Members may discover facts other than, different from, or in addition to, those that they know or believe to be true with respect to the Released Claims. Replacement-Battery-Purchaser Class Members expressly waive and fully, finally, and forever settle and release any known or UNKNOWN, suspected or UNSUSPECTED, contingent or noncontingent claim with respect to the Released Claims, whether or not concealed or hidden, without regard to the subsequent discovery or existence of such other, different, or additional facts. With respect to

any and all Released Claims, the Parties stipulate and agree that upon the Effective Date, each Replacement-Battery-Purchaser Class Member shall be deemed to have, and by operation of this Final Judgment and Order shall have, expressly waived any and all provisions, rights, and benefits conferred by any law of any state, district, or territory of the United States, or principle of common law, which is similar, comparable, or equivalent to California Civil Code § 1542, which provides:

A general release does not extend to claims which the creditor does not know or suspect to exist in his or her favor at the time of executing the release, which if known by him or her must have materially affected his or her settlement with the debtor.

Named Plaintiff understands there is a risk he and Replacement-Battery-Purchaser Class Members might suffer losses UNKNOWN or UNSUSPECTED at the time of the release. Class Counsel advised Named Plaintiff of the rights conferred by California Civil Code § 1542. With knowledge of the risks, and upon advice of counsel, Named Plaintiff, and each Replacement-Battery-Purchaser Class Member shall be deemed to have, and by operation of this Final Judgment and Order shall have, expressly assumed the risks of UNKNOWN or UNSUSPECTED claims included in the Released Claims.

18. Waiver of Class Action Procedural Device and Any Other Method of Aggregating Claims by Replacement-Battery-Purchaser Class Members: Each Replacement-Battery-Purchaser Class Member waives the right to use the class action procedural device or any other method of joining, consolidating, or aggregating the claims of multiple plaintiffs, persons or entities, or the public in any future lawsuit or other proceeding against the Released Parties that asserts any claim that was or could have been brought in the Litigation. In addition, each Replacement-Battery-Purchaser Class Member waives any right conferred by rule, statute, or any other law to seek—in any future lawsuit or other proceeding against the Released Parties arising from claims that were or could have been brought in the Litigation—any relief on behalf of or for the benefit of any other persons. Stated differently, each Replacement-Battery-Purchaser Class Member may only seek money or other relief for himself or herself, individually. Replacement-Battery-Purchaser Class Members recognize that as part of the Amended Settlement Agreement, Defendants are not contesting the certification of a conditional Settlement

Class, even though Defendants believe that this Litigation could not be certified as a class action for trial purposes. Moreover, Replacement-Battery-Purchaser Class Members further recognize that they have already availed themselves of the class action procedural device once in this Litigation, and obtained the multiple benefits provided by the Amended Settlement Agreement.

19. Reservation of Individual Lawsuits for Monetary Damages by Replacement-Battery-Purchaser Class Members: Each Replacement-Battery-Purchaser Class Member, excluding the Named Plaintiff, does not release and discharge, but instead preserves, the right of an individual Replacement-Battery-Purchaser Class Member to file an individual lawsuit against any Released Party seeking monetary damages (but such a Settlement Class Member can only file such an individual lawsuit for himself or herself, and not for any other person) for damages which arose on or before the Effective Date and are based on claims that either were asserted or could have been asserted in the Litigation. Each Replacement-Battery-Purchaser Class Member understands and agrees that his or her reservation of rights to file such individual lawsuits is subject to the waiver of the class action procedural device and any other method of aggregating claims, described in paragraphs 18 and 27. If a Replacement-Battery-Purchaser Class Member elects to participate in the Interstate Batteries Settlement Program, however, he or she will be required to agree to the release described below in paragraph 24 and in the Amended Settlement Agreement. (Dkt. No. 77 at 52, Exs. D-E.)

Release of Claims and Rights by Unexpired-Warranty-Holder Class Members

20. Release of Certain Equitable Claims by Unexpired-Warranty-Holder Class Members: Upon the Effective Date, the Released Parties shall be fully, finally, and forever released and discharged from any and all claims for injunctive relief, declaratory judgment relief, and any other non-monetary equitable relief, known or UNKNOWN, arising on or before the Effective Date that Unexpired-Warranty-Holder Class Members have, however styled or presented, relating to how the adjusted price of a Replacement Battery in a pro-rata-adjustment transaction would be calculated under a Previous Interstate Batteries' Pro-Rata Warranty. Unexpired-Warranty-Holder Class Members do not release any other claims they may have against the Released Parties. If an Unexpired-Warranty-Holder Class Member becomes eligible

1 for and elects to participate in the Interstate Batteries Settlement Program, however, he or she
2 will be required to agree to the release described below in paragraph 24 and in the Amended
3 Settlement Agreement. (Dkt. No. 77 at 52, Exs. D-E.)

4 21. After entering into the Amended Settlement Agreement, Unexpired-Warranty-
5 Holder Class Members may discover facts other than, different from, or in addition to, those that
6 they know or believe to be true with respect to the Released Claims. Unexpired-Warranty-
7 Holder Class Members expressly waive and fully, finally, and forever settle and release any
8 known or UNKNOWN, suspected or UNSUSPECTED, contingent or noncontingent claim with
9 respect to the Released Claims, whether or not concealed or hidden, without regard to the
10 subsequent discovery or existence of such other, different, or additional facts. With respect to
11 any and all Released Claims, the Parties stipulate and agree that upon the Effective Date, each
12 Unexpired-Warranty-Holder Class Member shall be deemed to have, and by operation of this
13 Final Judgment and Order shall have, expressly waived any and all provisions, rights, and
14 benefits conferred by any law of any state, district, or territory of the United States, or principle
15 of common law, which is similar, comparable, or equivalent to California Civil Code § 1542,
16 which provides:

17 *A general release does not extend to claims which the creditor does not know or suspect*
18 *to exist in his or her favor at the time of executing the release, which if known by him or*
her must have materially affected his or her settlement with the debtor.

19 Named Plaintiff understands there is a risk he and Unexpired-Warranty-Holder Class Members
20 might suffer losses UNKNOWN or UNSUSPECTED at the time of the release. Class Counsel advised
21 Named Plaintiff of the rights conferred by California Civil Code § 1542. With knowledge of the risks,
22 and upon advice of counsel, Named Plaintiff, and each Unexpired-Warranty-Holder Class Member
23 shall be deemed to have, and by operation of this Final Judgment and Order shall have, expressly
24 assumed the risks of UNKNOWN or UNSUSPECTED claims included in the Released Claims.

25 **Release of Claims and Rights by Named Plaintiff**

26 22. Named Plaintiff's Release of All Claims: Upon the Effective Date, the Released
27 Parties shall be fully, finally, and forever released and discharged from any and all claims by or
28 brought on behalf of the Named Plaintiff, whether legal, equitable, monetary, or otherwise,

known or UNKNOWN, arising on or before the Effective Date that Named Plaintiff either asserted or could have asserted against the Released Parties in the Litigation.

23. After entering into the Amended Settlement Agreement, Named Plaintiff may discover facts other than, different from, or in addition to, those that he knows or believes to be true with respect to the claims he is releasing. Named Plaintiff expressly waives and fully, finally, and forever settles and releases any known or UNKNOWN, suspected or UNSUSPECTED, contingent or noncontingent claim, whether or not concealed or hidden, without regard to the subsequent discovery or existence of such other, different, or additional facts. Named Plaintiff and the Defendants stipulate and agree that upon the Effective Date, Named Plaintiff shall expressly waive any and all provisions, rights, and benefits conferred by any law of any state, district, or territory of the United States, or principle of common law, which is similar, comparable, or equivalent to California Civil Code § 1542, which provides:

A general release does not extend to claims which the creditor does not know or suspect to exist in his or her favor at the time of executing the release, which if known by him or her must have materially affected his or her settlement with the debtor.

Named Plaintiff understands there is a risk he might suffer losses UNKNOWN or UNSUSPECTED at the time of the release. Class Counsel advised Named Plaintiff of the rights conferred by California Civil Code § 1542. With knowledge of the risks, and upon advice of counsel, Named Plaintiff expressly assumes the risks of UNKNOWN or UNSUSPECTED claims.

Release for Participation in Interstate Batteries Settlement Program

24. Additional Release for Participation in Interstate Batteries Settlement Program: The releases described above in paragraphs 16 to 23 shall become effective according to the specific terms of this Final Judgment and Order. If any eligible Settlement Class Member elects to make a valid claim under the Interstate Batteries Settlement Program (as described in the Amended Settlement Agreement) and is issued a check card or product voucher under that program, he or she will be required in exchange to provide a different release, as described in the Amended Settlement Agreement. (Dkt. No. 77 at 52, Ex. D-E.) The Court approves of that release for those Settlement Class Members who choose to participate in the Interstate Batteries

Settlement Program. That release arises under the Amended Settlement Agreement and from an eligible Settlement Class Member's participation in the Interstate Batteries Settlement Program.

INJUNCTION AGAINST SETTLEMENT CLASS MEMBERS

25. Settlement Class Members are HEREBY ENJOINED as follows:

Replacement-Battery-Purchaser Class Members Barred from Asserting Released Claims And Using the Class Action Procedural Device

26. The Court permanently bars and enjoins all Replacement-Battery-Purchaser Class Members from instituting, maintaining, or prosecuting, either directly or indirectly, any lawsuit to the extent that it asserts Released Claims, as described above in paragraphs 16 to 19.

27. The Court permanently bars and enjoins each Replacement-Battery-Purchaser Class Member from seeking to use the class action procedural device or any other method of joining, consolidating, or aggregating claims of multiple plaintiffs, persons or entities, or the public in any future lawsuit or other proceeding against any Released Party that asserts any claim, whether legal, equitable, monetary, or otherwise, that was or could have been brought in the Litigation. The Court permanently bars and enjoins each Replacement-Battery-Purchaser Class Member from seeking—in any future lawsuit or other proceeding against the Released Parties—any relief on behalf of or for the benefit of any other persons. The Court permanently bars and enjoins each Replacement-Battery-Purchaser Class Member from seeking any relief or otherwise participating as an unnamed class member, represented person, or beneficiary in any class action or other representative, joint, consolidated, or aggregate proceeding that asserts any claim, whether legal, equitable, monetary, or otherwise, that was or could have been brought in the Litigation.

Unexpired-Warranty-Holder Class Members Barred from Asserting Released Claims

28. The Court permanently bars and enjoins all Unexpired-Warranty-Holder Class Members from instituting, maintaining, or prosecuting, either directly or indirectly, any lawsuit to the extent that it asserts Released Claims, as described above in paragraphs 20-21.

DISMISSAL OF THE LITIGATION

29. The Court HEREBY DISMISSES THIS ACTION WITH PREJUDICE AND WITHOUT COSTS, except as might be awarded in connection with Named Plaintiff's Motion for Attorneys' Fees, Expenses, and Service Award. (Dkt. No. 78.).

FEE APPLICATION


30. The Court shall consider the Motion for Attorneys' Fees, Expenses, and Service Award, (Dkt. No. 78), separately from the Court's consideration of the fairness, reasonableness, and adequacy of the Amended Settlement Agreement. Any order or proceedings relating to the Motion for Attorneys' Fees, Expenses, and Service Award, (Dkt. No. 78), or any appeal from any order relating thereto or reversal or modification thereof, shall not disturb or affect this Final Judgment and Order or affect or delay the finality of this Final Judgment and Order.

COURT'S CONTINUING JURISDICTION

31. Without affecting the finality of this Final Judgment and Order in any way, this Court hereby retains continuing and exclusive jurisdiction over the Named Plaintiff, the Settlement Class, and the Defendants with respect to the Amended Settlement Agreement and this Final Judgment and Order, including (a) implementation of the Amended Settlement Agreement; (b) Named Plaintiff's Motion for Attorneys' Fees, Expenses, and Service Award, (Dkt. No. 78); and (c) jurisdiction over the Named Plaintiff, members of the Settlement Class, and the Defendants for purposes of construing, enforcing, and administering the Amended Settlement Agreement and this Final Judgment and Order, including the injunctions set forth herein.

IT IS SO ORDERED.

Dated: July 5, 2012


 Judge Claudia Wilken
 United States District Judge